

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Omar Hervis

v.

Civil No. 09-cv-158-JD

United States of America

O R D E R

Omar Hervis, proceeding pro se, seeks relief under 28 U.S.C. § 2255, alleging ineffective assistance of counsel. The government was ordered to file an answer or a motion to dismiss. The court then granted the government's motion to extend time to answer.

The government filed an "Opposition to Petition under 28 U.S.C. § 2255," which will be construed as an answer. Hervis has filed a motion in the form of a letter, seeking assistance from the court in retrieving a copy of his file in the criminal case from Gary Hill, his counsel in that proceeding. Hervis also asks that the time for his response to the government's opposition be extended to a date that is three weeks after he receives the file from Hill.

In its opposition, the government refers to the transcripts of Hervis's change of plea hearing and his sentencing hearing. The government also refers to Hervis's plea agreement and relies

on a telephone conversation between the Assistant United States Attorney and Hervis's former counsel, Gary Hill.

Hervis represents in his letter that he has authorized his daughter to receive a copy of his file from Hill but that Hill has not provided the requested file to her. Hill shall provide a copy of Hervis's file to Hervis's daughter. The clerk of court shall provide copies of the transcripts and the plea agreement to Hervis. Hervis can view a copy of his presentence report at a meeting with his case worker. In addition, to the extent the government intends to rely on statements made by Hill, those statements must be properly supported by an affidavit; otherwise they will not be considered by the court.

Conclusion

For the foregoing reasons, Hervis's motion to obtain legal documents from his former counsel (document no. 7) is granted to the extent that Attorney Hill shall provide a copy of his file from Hervis's criminal proceeding to Hervis's daughter **on or before September 25, 2009.**

The clerk of court shall copy and send Hervis copies of the transcripts of his change of plea hearing and his sentencing hearing (06-cr-208 documents 113 and 129) and a copy of his plea agreement.

The government's opposition (document no. 6) is construed as an answer. The government shall file a motion for summary judgment, after **September 30, 2009**, in which it raises and properly supports the arguments presented in its opposition.

Hervis shall have **thirty days from the date the motion for summary judgment is filed** to file his response.

A copy of this order will be sent to Gary Hill, Esquire, at 801 North El Paso Street, Ste 200, El Paso, Texas 79902-4160.

SO ORDERED.


Joseph A. DiClerico, Jr.
United States District Judge

September 10, 2009

cc: Omar Hervis, pro se
Aixa Maldonado-Quinones, Esquire